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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,517

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Domokos Boda

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3719

466 7590 04/15/2009

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EXAMINER

TOTH, KAREN E

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

04/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,517	<b>Applicant(s)</b> BODA, DOMOKOS	
	<b>Examiner</b> KAREN E. TOTH	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11, 14-17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 14-17, 19, 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The Examiner regrets that, upon further examination, the following rejections must be made.

#### ***Claim Rejections - 35 USC § 103***

1. Claims 11, 13-17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salzman (US Patent 5423320) in view of Fiddian-Greene (US Patent 6238339) and Singh (US 54908999).

Regarding claims 11 and 19, Salzman discloses a tonometric device comprising a distal end configured to be inserted in a patient's gastrointestinal tract (element 14) with a section that is introduced into the body (element 14a), where the introduced section comprises a first tube (element 54) that is connected to an additional tube (the portion of 54 remaining outside the body) and parallel to a second tube (element 56) that is also connected to an additional tube (the portion of 56 remaining outside the body), where the distal end of the first and second tubes are in communication (figure 6), where the tubes are made of gas permeable material (column 5, lines 6-8 and 16-23), and where the additional tubes are connected (via element 58) and may contain a substance for measuring carbon dioxide concentration (table 1). Salzman does not disclose the particular gas permeable material, means on the external portion of the device for fixing it in position, or filling the tube with an aqueous solution for detecting carbon dioxide concentration comprising sodium hydrogen carbonate, sodium chloride, and phenolic red. Fiddian-Greene teaches a tonometric device comprising a sensing

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section covered with a gas-permeable silicone rubber membrane (column 8, lines 50-51), where the device's position may be fixed using an external component of the device (element 24), in order to effectively control sampling. Singh teaches an aqueous solution for detecting carbon dioxide concentration comprising sodium hydrogen carbonate (also known as sodium bicarbonate), sodium chloride, and phenolic red (more commonly known as phenolic red) (column 8, lines 57-68; column 11 line 53 to column 12 line 23), in order to provide accurate carbon dioxide measurements. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device of Salzman with a silicone rubber tube membrane and means for fixing the device's position, as taught by Fiddian-Greene, in order to effectively control sampling, and used an aqueous solution comprising sodium hydrogen carbonate, sodium chloride, and phenol red as the indicator, as taught by Singh, in order to provide accurate measurements.

Regarding claim 13, Salzman's tubes inherently have connecting means because they are connected to a separate device (column 6, lines 25-27).

Regarding claim 14, Salzman in view of Fiddian-Green and Singh discloses all the elements of the claimed invention, as described above, except for connecting the tubes to a syringe. Fiddian-Greene further teaches tubes that are configured to connect to a syringe (column 24, lines 60-64), in order to manually control pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the system of Salzman in view of Fiddian-Green and Singh with the tubes

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configured to connect to a syringe, as taught by Fiddian-Greene, in order to manually control pressure.

Regarding claims 15 and 16, though Salzman does not expressly disclose the specific diameter and wall thicknesses of the tubes, at the time the invention was made it would have been an obvious matter of design choice for one of ordinary skill in the art to choose a particular wall thickness and diameter, because the Applicant has not disclose that the particular diameters and thicknesses provide a particular advantage, are for a particular purpose, or solve a stated problem. Moreover, it appears that a particular combination of wall thickness and diameter chosen by one of ordinary skill in the art and Applicant's wall thickness and diameter would perform equally well to monitor a patient.

Regarding claim 17, Salzman's second tube is within the wall surrounding the first tube (figure 6), since the entire shaded structure surrounding the first tube may be considered its wall, thereby making the second tube formed in that wall.

Regarding claim 20, Fiddian-Greene further teaches the gas-permeable material being configured to be permeable for carbon dioxide (column 8, lines 59-67), in order to allow monitoring of a patient's pH. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device of Salzman in view of Fiddian-Green and Singh permeable for carbon dioxide, as taught by Fiddian-Greene, in order to allow monitoring of a patient's pH.

### ***Conclusion***

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN E. TOTH whose telephone number is (571)272-6824. The examiner can normally be reached on Mon thru Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/  
Primary Examiner, Art Unit 3735

/K. E. T./  
Examiner, Art Unit 3735